

Receipts from letting out of property for commercial activities held taxable as business receipts

Summary – The Mumbai ITAT in a recent case of Plaza Hotels (P.) Ltd., (the Assessee) held that receipt on account of exploitation of immovable property by way of complex commercial activity, is business income

Facts

- The assessee owned and ran a number of hotels. It ran the hotel in question till 1994 when it entered into lease agreement with one KHIL to run the hotel.
- The assessee received one per cent of turnover from KHIL and showed it as business income in return of income.
- The Assessing Officer held income received from KHIL as income from house property.
- On appeal, the Commissioner (Appeals) upheld the decision of Assessing Officer by observing that entire hotel was given under the agreement to KHIL to run, thus control of hotel was given to KHIL and, therefore receipt in hands of the assessee was to be treated as income from house property, not from the business.
- On assessee's appeal:

Held

- The assessee was running the hotel itself before giving to KHIL under agreement entered in the year of 1994. The entire activities of hotel carried out by the assessee itself before entering the agreement was given to KHIL. An interest free security was also obtained from KHIL, which was refundable after completion of period entered into between the parties. The assessee was sharing a revenue at the rate of 1 per cent of the revenue earned by the KHIL on account of running of hotel owned by the assessee. Though the Commissioner (Appeals) has recorded the facts in his order that KHIL was allowed to renovate the hotel or reconstruct the same from his own funds, but it does not mean that the character of asset owned by the assessee has been changed. The fact is that the assessee owned hotel, which was run by the assessee before entering into the agreement. Whatever the requirement of the hotel was there, the same was made by KHIL with its own fund as agreed upon. The character of the asset was that the entire hotel which was run by the assessee itself earlier was given under the agreement to KHIL to run the hotel.
- Therefore, this was an exploitation of commercial asset for business purpose and whatever the receipts are received from exploiting of commercial asset for business use are to be treated as business receipts. When the assessee was running this hotel, the receipts from the hotel were shown as business receipts and they were accepted. After giving to KHIL *i.e.* in the year 1994, the

return was filed for subsequent for assessment year showing the revenue receipt from KHIL as business income and the same was accepted.

- The matter reached to the stage of the Tribunal, however, this issue was never disputed by the Assessing Officer that the revenue receipt received from KHIL under the agreement are business receipt as they were accepted. Therefore, it cannot be said that any character of the revenue receipt has been changed in the year under consideration. The principle of consistency in the case in hand is applicable. Accordingly, the Assessing Officer should have accepted the receipt under the head business income shown by the assessee.
- The assessee has given the property for exploiting by way of complex commercial activities in the year of 1994 and from assessment years 1995-96 to 2005-06, the department has accepted the contention of the assessee holding that the receipt on account of leasing to KHIL are business receipt.
- This is also a matter of fact that there was no fixed rate as the assessee was earning/receiving only 1 per cent of the gross revenue receipts. From this fact, it is amply proved that the commercial asset was used by the assessee, and, therefore, any commercial receipt has to be treated as business receipt. It is further seen that as per agreement entered into between the assessee and KHIL, the hotel premises will be handed over to the assessee and the assessee is liable to pay all the expenditures incurred by KHIL on its construction and renovation as per formula agreed upon. It is also a matter of fact that the assessee was running this hotel itself and the assessee is also running various other hotels at present.
- The receipt from KHIL on account of leasing the hotel was business receipt. There is no dispute that the assessee is owner of the hotel given on lease to KHIL. All the licenses and permissions are in the name of assessee. This is also a fact that the assessee was running its hotel itself before giving to KHIL. Accordingly, the receipts received from KHIL are business receipt. Therefore, this ground allow is to be allowed of the assessee and direct the Assessing Officer to treat the business receipt against income from property treated by him.